



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/158425

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 19, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on July 08, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly terminated the Petitioner's personal training funding.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Sue Hanks

Bureau of Long-Term Support  
1 West Wilson

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. He has been enrolled in the IRIS program since 2012.

2. Petitioner's Individual Support and Service Plan (ISP) has the following pertinent outcomes: to have the best possible health and to be physically fit and participate in sports at the highest level possible. To meet this outcome, the plan has included personal trainer services 2x/week (including a gym membership) at a cost of \$280/month since December 1, 2012. On May 14, 2014, the ISP was revised to allow the personal trainer services only from June 1, 2014 – August 31, 2014. The plan notes that SHC worker or natural supports should assist the Petitioner with ongoing training and support in the gym after the service ends.
3. On June 24, 2014, the agency issued a Notice of Action terminating the personal trainer services effective August 31, 2014.

### **DISCUSSION**

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.*, §441.468.

IRIS Program policy no. SC 16.1 provides guidance on coverage of customized goods or services under the program. Such goods or services are those that enhance the person's opportunities related to living arrangement, relationship, community inclusion, work, and functional medical status. The item must meet all four of the following criteria:

- a. It must be designed to meet the person's functional, vocational, medical, or social needs and also advance the desired outcomes in the individual service plan;
- b. It must be documented on the service plan;
- c. It cannot be prohibited by statutes or regulations;
- d. It cannot be available through another source or be experimental in nature.

In addition, the item must meet at least one of the following criteria:

- a. It will maintain or increase the person's safety in the home or community;
- b. It will decrease or prevent increased dependence on other Medicaid-funded services;
- c. It will maintain or increase the person's functioning related to his disability;
- d. It will maintain or increase the person's access to or presence in the community.

The agency must review questionable items that exceed the cost of average products necessary to meet an outcome. The agency must provide an item that is the most cost effective possible. See IRIS Program Operations Infrequent Expense Policy at [www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf](http://www.dhs.wisconsin.gov/bdds/IRIS/BudgRevw.pdf). See also 42 C.F.R. §440.180(b)(9).

The Petitioner's brother and mother testified on his behalf at the hearing. They stated that the Petitioner's weight is a concern and regular exercise is essential to ensuring the Petitioner's health. They argue that the trainer specializes in working with individuals with special needs and the trainer provides him with weight and body measurements as well as consultation on diet and nutrition. They also assert that the Petitioner cannot be alone at the gym and requires supervision while he is exercising.

The agency contends that the cost of gym membership could be considered. It has discontinued the personal trainer services asserting that once a training routine has been established, the Petitioner can continue that routine with natural supports. The Petitioner's representatives assert that they are not in a position to supervise or train the Petitioner at the gym.

While it is clear that a regular exercise program is essential to attaining and maintaining a healthy weight and lifestyle, I cannot conclude that personal trainer sessions 2x/week at a cost of \$280/month is the most cost-effective way that the Petitioner can participate in a regular exercise program. Therefore, I conclude that the agency has properly discontinued the Petitioner's 2x/week personal trainer sessions at a cost of \$280/month. The agency seems to be open to exploring gym memberships or other more cost-effective methods of ensuring that Petitioner receives regular exercise and I urge the parties to continue to explore other options.

### **CONCLUSIONS OF LAW**

The agency properly discontinued the Petitioner's 2x/week personal trainer sessions.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

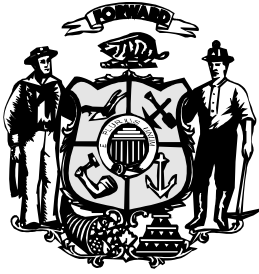
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of September, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 2, 2014.

Bureau of Long-Term Support